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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Part 95 of the Commission's Rules
to Allow Interactive Video and Data Service
Licensees to Provide Mobile Service to
Subscribers

WT Docket No. 95-47

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OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

EON Corporation ("EON") hereby submits its Opposition to the National Association of Broadcasters' ("NAB") Petition For Partial Reconsideration of the Federal Communication Commission's ("FCC" or the "Commission") Report and Order in the above-captioned proceeding.¹

INTRODUCTION

The NAB has petitioned for reconsideration of the Mobility Order solely on the basis that it is dissatisfied with the Commission's decisions with respect to concerns previously raised by the NAB in this proceeding, although NAB admits that the Commission has already explicitly "acknowledged and addressed" these concerns.² It is well established that "bare disagreement, absent new facts and arguments properly

¹ Petition for Partial Reconsideration, filed July 25, 1996 (the "NAB Petition"). On May 30, 1996, the Commission released its Report and Order in the above-captioned proceeding. *Amendment of Part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers*, 11 FCC Rcd 6610 (1996) (the "Mobility Order"). In the Mobility Order, the Commission correctly decided to allow Interactive Video and Data Service ("IVDS") licensees to provide mobile, as well as fixed, services.

² NAB Petition at 2-3.

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submitted, is insufficient grounds for granting reconsideration.”³ The NAB Petition presents no new facts to justify its requests, but simply states, yet again, the same arguments it has made throughout the IVDS proceedings. Although the NAB disagrees with the Commission’s determinations on certain issues, these determinations were based upon a full and complete administrative record, were correctly and properly made, and represent a correct and careful balancing of the desire to promote a robust and innovative IVDS service and the need to protect other services from undue interference. The Commission should therefore deny the Petition.

I. The Commission Has Already Fully Considered And Addressed The Issues Raised In The NAB Petition

Specifically, the NAB argues in its Petition that the Commission should: (1) modify its decision in the Mobility Order to set the maximum power for IVDS response transmitter units (“RTUs”) at 100 mW *mean* power to instead specify 100 mW *peak* power or, in the alternative, to establish a specific measurement procedure for determining RTU signal strength;⁴ and (2) modify the duty cycle rule to require that any fixed IVDS RTU or cell transmitter station (“CTS”) within 10 miles of a TV channel 13 grade B contour (rather than only those within the contour), and all mobile RTUs, be subject to the 5 second duty cycle limitation.⁵ These arguments present no new facts and simply recast and restate NAB’s earlier arguments in this proceeding.⁶

³ *Creation of an Additional Private Radio Service*, 1 FCC Rcd 5, 6 (1986).

⁴ *NAB Petition* at 6.

⁵ *Id.* at 8.

⁶ See Reply Comments of the National Association of Broadcasters, *Amendment of Part 95 of the Commission’s Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Service to Subscribers*, WT Docket No. 95-47, (July 11, 1995).

The Commission has made clear on a number of occasions that “petitions for reconsideration are not granted for the purpose of altering [its] findings on the basis of matters that have already been fully considered and substantively settled.”⁷ While NAB may disagree with the Commission’s final decisions, those decisions nonetheless fully considered and properly addressed NAB’s concerns.⁸ As is discussed in more detail below, the Commission correctly concluded that the rule modifications adopted in the Mobility Order do not seriously increase the risks to TV channel 13. These issues, therefore, should not be revisited.

A. The “Mean Power” Requirement

In the Mobility Order, the Commission rightly noted that utilization of a mean power measurement, rather than peak power, in determining the maximum effective radiated power of RTUs would only “insignificantly” increase the risk of objectionable interference to TV channel 13.⁹ It balanced this insignificant risk against the increased economic flexibility and efficiency that IVDS licensees would have in system design and correctly determined that a mean power measurement was justified.¹⁰

⁷ *Creation of an Additional Private Radio Service*, 1 FCC Rcd at 6-7 (“In essence, the petitioners simply restated [their earlier reasons] These reasons had been stated previously by these petitioners and other supporters of the proposal. That petitioners disagree with our decision regarding the priority of various existing and proposed services is quite clear. However, bare disagreement, absent new facts and arguments properly submitted, is insufficient grounds for granting reconsideration.”). See also *WWIZ, Inc.*, 37 FCC 685, *aff’d sub nom., Lorain Journal Co. v. FCC*, 351 F.2d 824 (DC Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *Florida Gulfcoast Broadcasters, Inc.*, 37 FCC 833 (1964).

⁸ See *Mobility Order*, 11 FCC Rcd at 6615-16 (discussing and adopting the *mean* power measurement for maximum ERP of RTUs), & 6618 (rejecting NAB’s arguments against a geographically based duty cycle rule).

⁹ *Mobility Order* at 6617.

¹⁰ The NAB attempts to cloud this issue by claiming that the Commission’s decision to allow effective radiated power (“ERP”) measurements to be averaged somehow endangers TV channel 13 because the rules do not adequately define the power measurement procedures for determining compliance with the rules. The definitions of and methods for determining ERP and mean power, however, are well understood within the

(Footnote continues on following page.)

B. The Duty Cycle Limitation

With respect to the duty cycle requirement, the Commission only eliminated this restriction in those instances where an IVDS RTU would not be operated within a TV channel 13 grade B contour.¹¹ This action explicitly recognizes NAB's interference concerns and deals with them in an appropriate and justified manner. A duty cycle restriction to protect channel 13 is not necessary outside the grade B contour, and certainly is not needed 10 miles outside the contour, where channel 13 licensees have no legitimate expectation of interference protection.¹²

The NAB's statement that a service area based duty cycle rule ignores the physics of RF propagation is misplaced. It is precisely because the Commission recognizes that RF signals do not obey map boundaries that it is forced to establish such a boundary as a matter of policy. In this case, that line is drawn at the grade B contour line. Given that over-the-air reception at this boundary is often marginal at best, this is a reasonable compromise. Also, although NAB *again* argues that the future implementation of ATV could result in a forced "cut back" of IVDS services if a 5 second duty cycle is not imposed on all IVDS RTUs, the Commission was, correctly, unpersuaded by this argument because any ATV system will likely be more immune to IVDS interference than current analog systems.¹³

(Footnote continued from previous page)

industry. The Commission has wisely decided not to set technical standards which cannot take into account variances in system design and implementation. Furthermore, whatever the ERP measurement methodology adopted, an IVDS licensee *must* eliminate any actual interference caused by its system. See 47 C.F.R. § 95.861 (1995).

¹¹ *Mobility Order* at 6618-19.

¹² *Id.*

¹³ *Id.* at 6619.

II. NAB's "Mean Power" and Duty Cycle Concerns Are Overstated and Are Fully Addressed In Any Event By Existing Commission Regulations

NAB's technical claims regarding the risk of interference to TV channel 13 are overstated at best. In considering the effect of IVDS operation on channel 13 viewing, the probability of NAB's theoretical interference actually occurring is quite low. There are 73 channel 13 stations in the nation, covering an estimated total population of 30 million households.¹⁴ This is approximately 25% of the more than 120 million households in the U.S.¹⁵ The average weekly circulation for channel 13 is 33%,¹⁶ which reduces the number of affected households to 10 million. Of these 10 million households, less than 10% are in the grade B contour,¹⁷ further reducing the total households affected to one million or less. With 120 million households in the U.S., this represents less than 1% of the population that is actually viewing channel 13 in a grade B signal strength environment. This does not even consider the probabilities that a transmission from an IVDS unit occurs *while* someone is watching and that that unit is within a range that could actually interfere when operating at 100 mW. It is obvious that these probabilities are extremely minimal, so NAB's suggestion of disastrous affects on channel 13 viewing are greatly exaggerated.

Furthermore, the Commission noted that IVDS licensees already are required by regulation to eliminate any actual television interference caused by their operations.¹⁸

¹⁴ Warren Publishing, Inc., 64 *Television and Cable Fact Book* (1996).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Mobility Order* at 6619.

Section 95.861 provides that:

Each IVDS system licensee *must investigate and eliminate interference* to television broadcasting and reception, from its component CTSs and RTUs, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the licensee fail to eliminate the interference within the 30 day period, the CTS or RTU causing the interference must discontinue operation.¹⁹

This regulation fully addresses the NAB's interference concerns. There is no need, therefore, to pose any further restrictions on IVDS licensees, particularly those based merely on hypothetical interference risks, such as those raised by NAB. If an IVDS licensee is unable to eliminate TV interference, it must cease operation of the offending components of its system. This stringent provision more than adequately protects TV channel 13 from interference from IVDS service providers while granting such providers sufficient flexibility to respond to market demand for specific IVDS services.

III. The Commission's Technical and Regulatory Parameters Ensure That the IVDS Service Maintains Its Distinct Nature

The NAB also resurrects its concerns that the Commission's rules will change the nature of IVDS services, and proposes that the Commission conduct annual reviews of the IVDS service to ensure that the Commission's rules do not allow IVDS licensees to provide services wholly unintended by the Commission or unnecessarily duplicative of other licensed services. This proposal not only represents an unnecessary and burdensome regulatory procedure, it conflicts with the Commission's general policy of allowing the market rather than regulation to drive the development of wireless services. The Mobility

¹⁹ 47 C.F.R. § 95.861(e)(1995) (emphasis added).

Order, consistent with the other recent Commission decisions,²⁰ seeks to provide IVDS licensees with sufficient flexibility to respond to the service needs and desires of consumers.²¹ Despite the NAB's attempts to exclusively tie IVDS services to broadcasting,²² so long as the licensees abide by the technical and regulatory parameters established in the Commission's rules, they may provide any number of broadcast, business and commercial wireless services.²³

Moreover, as NAB recognizes,²⁴ the Commission's technical parameters ensure that the nature of IVDS remains consistent with the concept for which the spectrum was allocated. Therefore, although the Commission's rules ensure the basic nature of the service, they also wisely allow the market to drive the development of individual service offerings. This approach provides for the most efficient and innovative use of valuable spectrum resources. The NAB offers no justification for imposing artificial limits on the development of IVDS. Regulatory second guessing, such as that proposed by NAB, must not be allowed to stifle the development of a vital IVDS service.

²⁰ See, e.g., *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rule Making, FCC No. 96-283 (Aug. 1, 1996) (permitting fixed wireless service offerings by commercial mobile radio service licensees).

²¹ See *Mobility Order* at 6613-14.

²² See *NAB Petition* at 2.

²³ *Mobility Order* at 6614.

²⁴ *NAB Petition* at 8.

CONCLUSION

For the reasons stated above, the Commission should expeditiously reaffirm its decisions in the Mobility Order and dismiss the National Association of Broadcaster's Petition for Partial Reconsideration.

Dated: August 28, 1996

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION** has been furnished, via hand delivery, on this 28th day of August, 1996, to the following:

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